

PBT Advisory Committee Meeting Notes September 14th, 2005

The seventh and final meeting of the PBT Rule Advisory Committee was held on September 14th, 2005 in Tacoma, Washington. The meeting was held at the Landmark Convention Center. A copy of the meeting agenda is included in [Attachment 1*](#).

The following advisory committee members attended the meeting:

Dave Galvin, King County Hazardous Waste Management
Diana Graham, American Chemistry Council
Pete Hildebrandt, Washington State Petroleum Association and Alcoa
Llewellyn Matthews, Northwest Pulp and Paper
Mo McBroom, Washington Environmental Council
Grant Nelson, Association of Washington Businesses
Ivy Sager-Rosenthal, Washington Toxics Coalition

Heather Trim, representing People for Puget Sound, joined the meeting by phone.

Ecology staff presenting information during the committee meeting:

Dave Bradley, Department of Ecology
Mike Gallagher, Department of Ecology
Greg Sorlie, Department of Ecology

The following representatives from government agencies also attended:

Carol Kraege, Department of Ecology
Rick Manugian, Department of Ecology
Pat Springer, EPA Region 10
Ted Sturdevant, Department of Ecology
Ann Wick, Washington State Department of Agriculture

Additional stakeholders and members of the public also signed in:

Mark Greenberg, American Chemistry Council
Heather Hansen, Washington Friends of Farms and Forests

Marc Daudon facilitated the meeting and Marley Shoaf took notes.

Convene and Welcome

Marc Daudon welcomed the committee to the seventh and final meeting of the PBT advisory committee. Marc explained that the committee had convened six times in 2004 to provide input on Ecology's PBT Rule and that the purpose of the meeting was for committee members to provide input on the most recent changes to the PBT Rule. Marc reviewed the process groundrules and guidelines and reminded members that the advisory committee meetings are a consultative process and that Ecology is not seeking consensus.

Greg Sorlie explained that Ecology received many comments and letters on the draft PBT Rule. All are posted on Ecology's PBT Rule website at: (<http://www.ecy.wa.gov/programs/eap/pbt/rule/index.html>). Ecology initiated the advisory committee meeting to explain and review Ecology's decision to make changes to the draft Rule. Ecology will file a revised draft Rule early the week of September 19th and will have a public comment period as required under the Rule filing process.

Background Information

Mike Gallagher presented background information on the PBT Rule and Rule-making process ([Attachment 2* - Slides 5-16](#)). He reviewed the results received during the public comment period held from June 1st, 2005 through July 29th, 2005 and comments from the public hearing held July 13th, 2005. In general, public comments stressed the importance for Ecology to have a clear and transparent decision-making process, to consider scientific information and the precautionary principle, to consider policy choices underlying the proposed PBT Rule, and to ensure administrative efficiency.

Based on the public comments, Ecology made several revisions to the draft PBT Rule. Mike explained that the revised Rule still contains four main parts:

- Part 1: General Provisions
- Part 2: Definitions
- Part 3: PBT List and Criteria/Procedures for Revising the List
- Part 4: Chemical Action Plans

Revisions were made to the Rule's environmental goal, proposed PBT list, process for selecting chemicals for CAPs, CAP contents, and other minor revisions to clarify procedures and ensure consistent language. A strikethrough version of Ecology's revisions to the PBT Rule is presented in [Attachment 3*](#).

Committee members had the following comments and questions on the overall Rule revisions:

- **Is Ecology re-filing the Rule or amending the Rule?** Ecology said that they will re-file the Rule and will check into whether or not they will withdraw the previous Rule.
- **Ecology should accept public comments on the entire Rule.** One committee member suggested that in the second phase of public comments, the public should be allowed to comment on the entire Rule, not just Ecology's recent revisions. Ecology intends to allow the public to comment on the entire Rule.

Revisions to the Proposed PBT List

Dave Bradley reviewed the changes that Ecology has made to the proposed PBT List. He explained that Ecology made changes to the list's format, added three chemicals to the List, included lead and cadmium on the List, and made revisions to the toxicity criteria ([see Attachment 2* - Slides 17-27](#)).

List Format & Toxicity Criteria

Dave reviewed the draft revisions to the PBT List format, which include merging footnotes into the PBT List and adopting qualitative and quantitative toxicity criteria. He explained that

Ecology also changed the toxicity criteria language to provide greater predictability, transparency, and a balance between qualitative and quantitative criteria

Advisory committee comments and questions on the revised list format and toxicity criteria include:

- **Why was the PAH: 3-Methyl Chlolanthrene dropped from the PBT list?** Ecology explained that this was an error and that PAH should be on the list.
- **The new format is clear and more understandable.** In general, committee members agreed that the revisions to the PBT list format were helpful.
- **There is no definition of a carcinogen or reproductive toxicity in the Rule so it is difficult to comment on the new draft language.** One member said that while the changes appear to be good, it is difficult to determine what the changes mean without definitions. Ecology will include definitions for these two terms and other terms in the toxicity criteria in the next draft of the Rule.
- **How do the criteria work with regard to groups of chemicals?** Ecology explained that in most cases the criteria apply to individual chemicals rather than to chemical groups.
- **What is the procedure for putting chemicals on the PBT List that have byproducts that meet the PBT criteria, but the parent compound does not?** Ecology said that some chemicals on the PBT List degrade and meet the PBT characteristics and that the chemicals would be considered because the CAP calls for a consideration of the chemical's source. Another committee member commented that a chemical that is not a PBT should not be on the PBT List.
- **Difficult to comment on the toxicity criteria.** Several committee members said that they do not know if they agree with the toxicity criteria changes because they are uncertain on how the criteria will be applied.
- **What is the rationale behind the alternative Rule language?** Ecology said that the alternative and revised language is meant to give more predictability to how Ecology will determine toxicity and that defining the criteria in the Rule will be more efficient in the long term.

Addition of chemicals to the PBT List

Ecology added three chemicals to the PBT List: nonylphenol, di-isodecyl phthalate, and di-n-hexyl phthalate. Dave reviewed the rationale for adding the chemicals to the list which include information on the chemicals' media-specific half-lives, Log Kow values, bioconcentration factors, and possible developmental toxicity. Dave also explained that lead and cadmium will remain on the PBT List although Ecology will not prepare a CAP on either of the chemicals until the EPA has concluded its metals assessment.

Committee members had the following comments and questions regarding the changes to the PBT List:

- **Many companies are moving away from nonylphenol as an ingredient for their products.**
- **Peer-reviewed literature is not always the best source of information for evaluating a chemical to be put on the PBT list.**

- **Ecology should not necessarily consider information from EPA's Water Quality criteria documents to be credible scientific information.** One committee member pointed out that information from EPA's Water Quality Criteria documents may not be peer-reviewed or scientifically valid.
- **Ecology should evaluate individual studies that were deemed credible.** One member said that the EU risk assessment is a highly political document and should not always be heavily relied upon because of all of the politics surrounding the assessment.
- **Ecology should be careful not to exclude useful information.** One member said that defining "credible information sources" in the Rule may unnecessarily exclude additional credible information sources from future consideration.
- **Committee members will submit written comments regarding the addition of chemicals to the PBT List.**
- **Are DIDP and DnHP the only two phthalates that meet the PBT criteria?** Ecology explained that they looked at seven phthalates and that only DIDP and DnHP met the PBT criteria. The committee member also asked if the phthalates had been identified in local samples; Ecology said that the two phthalates had not been found in local samples.
- **Does Ecology have a time limit for the EPA's metals assessment to conclude?** One member was concerned that Ecology will be waiting for the EPA's process to conclude for many years and questioned at what point will Ecology have waited long enough? Ecology said that they do not have a timeline.
- **What is the rationale behind waiting for the metals assessment to conclude?** Ecology said that they have always intended to wait for the EPA's process to conclude before preparing CAPs on lead and cadmium.
- **Ecology should not wait for the EPA to take action on lead.** One member expressed frustration that Ecology was waiting to deal with lead. She pointed out that Ecology's Strategy document states that Ecology will work to eliminate lead by 2020. She said that study after study have shown that lead is bioavailable and that it is still a problem. She said that Ecology's decision to take no action on lead seems to be a political decision and it that undermines the credibility of the entire Rule. Ecology explained that they are waiting for the EPA's assessment because there are questions about the bioavailability criteria and whether or not it applies to metals.
- **Lead and Cadmium should not be included in the CAP process.** One member said that he was pleased with Ecology's decision to wait for the EPA's metal assessment to conclude. He said that lead and cadmium should not be included on the PBT List at this point and that EPA's assessment should be concluded prior to the chemicals being added to the PBT list. He said that the environmental community has used the presence of chemicals on the PBT list to push policies and that is the reason he does not want lead and cadmium included on the PBT list.
- **Why is the language regarding CAP preparation included in Section 4 instead of Section 3?** Ecology said that they will look into where the language fits best and make changes if necessary.

Selecting Chemicals for Chemical Action Plans

Dave described the changes that Ecology made to the CAP development and CAP selection sections of the Rule. He explained that the previous Rule language proposed placing chemicals into one of three categories, included a set of criteria for CAP development, and laid out the process for ranking/prioritizing/selection factors for selecting chemicals for CAPs. Revisions to the Rule include streamlining the CAP selection process by eliminating the criteria for identifying candidates for CAP development, eliminating the three “list categories” and revising the selection process to include a multi-year schedule for CAP preparation. The schedule development process is presented in [Attachment 2* - Slides 28-35](#).

Advisory committee members had the following questions and comments on the revisions to the CAP selection process:

- **Ecology should have a screening process before a CAP is initiated.** One member expressed concern that Ecology will complete a CAP for every chemical that is on the PBT list and that the CAP process should not be used to determine if a CAP is needed. She suggested that Ecology needs a screening process to determine if a chemical should be selected for a CAP. Ecology explained that there is a consideration of feasibility before a CAP is initiated and that it is not likely that all chemicals will have a CAP. Ecology said that it is not their intention for every chemical on the PBT list to have a CAP.
- **What data will Ecology use to determine the “presence in Washington” criteria?** Ecology said that they will use whatever information sources are available, which may include TRI data, permit data, and sediment quality databases. A committee member also asked Ecology if the product is “used” in Washington State whether it would meet the criteria for “presence.” She disagreed with limiting the criteria to used or released in Washington State because it limits Ecology’s ability to take preventative action. Another member pointed out that the presence of a chemical depends largely on analytic chemistry. He pointed out that chemicals will be more easily detected at smaller concentrations in the future.
- **A chemical’s presence in Washington may or may not have anything to do with actions that Ecology can take.** One member cautioned that even if a chemical is present in the state, Ecology may not be able to do anything about it.
- **Revisions to the selection factors are good.**
- **What does PBT “characteristics” mean?** Ecology clarified that PBT characteristics refer to a chemical’s properties and include half-life, bioaccumulation factor, and toxicity.
- **Does the Rule specify the frequency of CAPs that will be conducted?** Ecology says that the Rule does not specify the frequency of CAPs because resource levels are difficult to predict and no two CAPs will be the same.
- **Ecology should review the PBT list every three years with the CAP schedule.**
- **Is the concept for the schedule that it will have dates or a priority list dependent on budget?** Ecology said that the schedule allows for predictability in terms of the chemicals Ecology will address. Ecology also said that they do not want a prescriptive schedule because they are unsure how long each CAP will take.

- **Selection criteria may be too limiting.** One member pointed out that it is too restrictive to only prepare CAPs for chemicals that are not regulated or prohibited under other state or federal regulations. The committee member said that according to the selection criteria, Ecology would not be able to prepare a CAP on PCBs. Ecology explained that since PCBs are still being released, they are not excluded from CAPs. Another member pointed out that there may be other programs addressing the chemical and that there may not be a need for Ecology to take further action.

Chemical Action Plans

Mike reviewed the changes that Ecology made to Section 400 (see Attachment 2* - Slides 36-38). Ecology eliminated the framework of using categories from the Rule and created a multi-year schedule for CAP development and preparation. Ecology also made changes to the feasibility and effectiveness sections which included the addition of criteria for identifying and evaluating safer substitutes and considering opportunities for reduction when preparing a CAP.

Advisory committee members had the following comments:

- **Ecology lost something between the previous draft Rule's category approach and the current approach of the schedule update.** One member said that Ecology's intention to remove the categories from the Rule was good; however she did not think that the overall objectives of the section or Rule were maintained. The committee member will provide Ecology with alternative language.
- **The Rule should consider the economic impacts of taking no action.** One committee member asked whether language regarding the impacts of taking no action had been removed from the Rule. She said that it should be included in the Rule and that Ecology should consider the economics of both taking action and not taking action.
- **Footnotes in Section 4 should be added to the Rule text.** One committee members suggested that Ecology should incorporate the footnotes into the text so that the concepts are formally in the Rule.
- **Disagreement over whether availability of a safer substitute should be used as a selection factor for CAP preparation.** One member suggested that the availability of a safer alternative should be added to Section 4.10 and used as a selection factor for CAP preparation. Another member disagreed and said that safer substitutes can be researched and identified during the CAP process and that the CAP should specify a timeline for finding safer substitutes.
- **The CAP selection criteria do not reflect the PBT's program goal of phasing out toxic chemicals.** One committee member said that the ultimate goal of the PBT program is to phase out harmful chemicals and that the current Rule language does not reflect the programs intent.
- **Performance criteria should be considered.** One member said that in addition to finding safer alternatives, Ecology needs to look at alternative substitutes that have the same performance as the chemical being phased out. He said that Ecology should not phase out a chemical until they are certain that manufacturers are able to use the safer substitute and that it performs and meets the performance/effectiveness of the former chemical.

- **Add language to Section 420.** One committee members suggested that Ecology should change the first part of sub-section c to read “information on the potential exposure to human health” rather than “information on the potential impacts on human health.”
- **The term eliminate has not been changed to “phase out” throughout the entire document.** One committee member said that he supports replacing the term “eliminate” with “phase out” throughout the Rule. He pointed but that there are still places in the Rule where the word “elimination” is used.
- **Ecology should consider the least burdensome alternative.** One member suggested that Ecology should assess whether the goals of the Rule are being achieved and that the least burdensome alternative may not be the least burdensome for all stakeholders. He suggested that Ecology establish or define the stakeholders to which the alternatives are least burdensome.
- **Ecology should name the agencies with which they will coordinate.** One member suggested that Ecology be more specific about naming the agencies with which they plan on coordinating efforts.

Revisions to the Environmental Goal

After reviewing the changes to the plan, committee members discussed the revisions made to the beginning of the Rule in the Environmental Goal section. In general, a few members disagreed on whether the intent of the PBT Program is to “phase out” chemicals or to “eliminate” chemicals. Members had the following comments:

- **The goal of the PBT Program is to eliminate toxic chemicals.** One member said that the goal stated in the Strategy document is to eliminate PBTs. She expressed frustration and disappointment that the revised Rule does not incorporate the Strategy goal and that the current Rule is focused too heavily on phasing out chemicals rather than eliminating them. She would like Ecology to incorporate the concept of eliminating chemicals into the Rule.
- **Eliminating PBTs is not realistic.** One member said that eliminating PBTs is unrealistic and that they are ubiquitous in the environment and can be formed from every day activities such as barbequing. He said that Ecology’s current approach gives a high degree of realism towards what is really possible and that there are many situations in which Ecology cannot phase out or eliminate PBTs, especially those that are naturally occurring. Another member disagreed and said that only considering a phase out of PBTs, rather than elimination, is a short-sighted vision and is the reason that the regulatory framework has failed today. She said that Ecology’s decision to take out language on the goal to eliminate PBTs is unfortunate and is not what the public wanted when they funded and supported the PBT Program.

Next Steps

Mike explained that Ecology will re-file the CR-102 the week of September 19th and initiate the public comment period and public hearing. The public hearing is expected to take place the evening of October 27th in Seattle. The public comment period will last 30 days and will be completed by November 4th. **[UPDATE on Sept. 22, 2005: Ecology will re-file the draft PBT Rule and a Supplemental CR-102 form in time for the October 5, 2005 Washington State Register. The Public comment**

period will be from October 19 to November 18, 2005, and a public hearing will be on November 9 in Seattle.] Ecology expects the PBT Rule to be finalized by the end of year.

Greg explained that Ecology will review comments from the advisory committee meeting and will further revise the Rule. Committee members need to send suggested language revisions to Ecology by September 16th. Greg said that although additional changes can be made after the CR-102 is filed, Ecology would like to have the Rule as close to complete as possible before it is filed.

Greg reminded the committee that the meeting was the final meeting of the PBT advisory committee. He thanked the committee for their comments and hard work over the past year to help shape the Rule.

Advisory committee members thanked Ecology for all of their work on the PBT Rule. One member said that the PBT advisory committee process was one of Ecology's best processes; he said that Ecology and the facilitator have done a great job throughout the advisory committee process.

*Attachments can be found on the Department of Ecology's website or obtained by email from Mike Gallagher.

Meeting Adjourned